SINGAPORE REPORTS.

IN RE H. E. KINGDON v. S. C. GOHO.

[Orig. Civil Juris. (Brown, J.) September 6, 1947]

Courts Ordinance, Section 8 (1) — Rules of the Supreme Court Order XLII Rules. — Application for leave to issue writ of attachment for contempt of court — Whether Rent Assessment Board is a Court — Increase of Rent (Restriction) Ordinance — Principle in punishing contempt of Court.

This was an application by Mr. H. E. Kingdon for leave to issue a writ of attachment against Mr. S. C. Goho for contempt of Court. It was alleged that the contempt was of Mr. Kingdon as President of the Rent Assessment Board and/or of the Board itself and that the several contempts were made in writing and were published in a letter by the Respondent to "The Hon. Secretary and the members of the Bar Committee and to Mr. Robert Henry Green, an Advocate and Solicitor of this Honourable Court." It was contested at the hearing of the motion on behalf of the respondent that the Rent Assessment Board was not a Court, and that therefore the High Court had no power to punish for a contempt of the Board or its President.

Held, (1) that the Rent Assessment Board is a Court and that the High Court has power to punish for contempt of it; (2) that it was beyond dispute that the letter in this case was of such a character that it would be contempt if published in a newspaper and that the fact that its publication was restricted to the Secretary and members of the Bar Committee and Mr. Green did not make the less a contempt.

Cases referred to :—

(1) *Melanie Lee's Case* (1933) S.S.L.R. 536.
(2) *The King v. The Electricity Commissioners* (1924) 1 K.B. 171.
(3) *Chin Sin Choy v. Chin Kee and others* 4 F.M.S.L.R. 3.
(4) *Rex v. Davies* (1906) 1 K.B. 32.
(5) *Rex v. Daily Mail, Ex parte Farnsworth* (1921) 2 K.B. 733.
(6) *In re Read and Ruggonson* (1742) 2 ATK. 291 at p. 469.
(7) *Reg v. Gray* (1900) 2 Q.B. 36.

ORIGINATING MOTION.

C. H. Withers-Payne for the Applicant.

J. Laycock for the Respondent.

Brown, J. : — This is an application by Mr. H. E. Kingdon for leave to issue a writ of attachment against Mr. S. C. Goho for contempt of court. The Motion Paper alleges that the contempt was of Mr. Kingdon as President of the Rent Assessment Board and/or of the Board itself. It alleges that the several contempts were made in writing and were published in a letter dated the 20th June 1947, a copy of which is contained in the applicant's affidavit in support. Para. 4 of the affidavit states that the said letter was published by the respondent "to the Honorary Secretary and the members of the Bar Committee and to Mr. Robert Henry Green, an Advocate and Solicitor of this Honourable Court".

It is contended, on behalf of the respondent, that the Rent Assessment Board is not a court, and that this Court has therefore no power to punish for a contempt of the Board or its President. It was argued that the fact that no legislation, past or present, has called the Board a court shews that it was never intended to be a court; and a detailed examination of the various sections of successive Increase of Rent (Restriction) Ordinances was made with a view to shewing that the Legislature has always drawn a distinction between the Board and a Court. As one example out of the many sections which were referred to in the course of this argument I may mention the original section 8 of the existing Ordinance. But it seems to me that the question of whether the Board is a court depends not so much (if at all) on what it is called as upon what it does. And I think that, in the absence of authority, the answer to the question must be sought in an examination of its procedure and powers. For the applicant, the case of *Melanie Lee*[1] was at first cited as authority. In that case Barrett-Lennard J., in considering section 13 (9) of the 1921 Ordinance which is the same as section 10 (9) of the existing Ordinance, said: "That sub-section says, 'the proceedings of the Board shall be deemed to be judicial proceedings,' and there can be no judicial proceedings before a body which is not a Court". That case, although it was not reported till 1933, was decided in 1921. Since it was decided there has been the decision of *The King v. The Electricity Commissioners*[2]. And in the light of that decision I do not think that the above-quoted dictum of Barrett-Lennard J. in the *Melanie Lee* case can be regarded as authoritative. The Electricity Commissioners had formulated a scheme which was held to be *ultra vires* their powers. The question was whether the King's Bench had the power to issue the prerogative writs of prohibition and certiorari to prohibit them from proceeding with the scheme and to order them to remove the scheme into the King's Bench Division. It could not be suggested that the Electricity Commissioners were a court, but they had the duty to act judicially. And Atkin L.J. at p. 205 said that there are bodies of persons "who would not claim to be, and would not be recognised as, Courts of Justice," but who nevertheless "had the duty to act judicially" and were therefore subject to the control of the High Court by means of the prerogative writs. The Rent

Assessment Board is subject to the control of this Court by means of the prerogative writs. But in the light of the Judgment of Atkin L.J. in the *Electricity Commissioners'* case, it cannot be said that that fact alone makes the Board a court; and that case would seem to override the dictum of Barrett-Lennard J. that because the Board's proceedings are deemed to be judicial proceedings that necessarily involves the proposition that the Board is a court.

For the respondent, the case of *Chin Sin Choy v. Chin Kee and others*[3] was cited. That case decided that the Deputy Controller of Labour, when holding an enquiry into a dispute under Section 126 B of the Labour Code, was not a court within the meaning of section 6 of the F.M.S. Civil Procedure Code, 1918. That decision dealt with the interpretation of the word "Court" as used in that section. And it was held that the word 'Court' as used in that section meant one of the courts described in section 4 (i) of the Courts Ordinance. Clearly therefore the section did not cover the Deputy Controller of Labour. But that was all it decided on that point. It did not decide that the Deputy Conroller of Labour could not be a court for any purpose, and it does not take us much further in answering the question of whether the Rent Board is a court.

I think that the only right approach to this question is to consider the Board's procedure and powers. Its proceedings are held in public. It takes evidence on oath. Both parties appear before it, either personally or by Counsel, and the respondent appears in answer to a summons. The Board has power to give a final decision. It issues its own writs of possession. And Rule 7 of its Rules of Procedure reads as follows :—

> 7. Subject to the provisions of the Ordinance and these rules, the practice and procedure of the Civil District Court in an action and in particular the practice and procedure with respect to the summoning of witnesses and with respect to discovery and inspection of documents shall with any necessary modifications apply to applications to the Board.

The procedure and powers of the Board are therefore so similar to that of a Court that I can see no material distinction. I hold that the Rent Assessment Board is a court. And as this Court has power to correct it, it is well-established that this Court has also the power to punish for a contempt of it, *Rex v. Davies*[4] and *Rex v. Daily Mail, Ex parte Farnsworth*[5].

'Contempt of court' covers a wide range of omissions and commissions, from the failure to obey a judgment or order of the Court to what Lord Hardwicke in *In Re Read and Ruggonson*[6] described as "scandalizing the Court itself". The former is an example of what is known as ordinary contempt. The latter is Special Contempt. And within the category of Special Contempt come newspaper articles which tend to prejudice the fair trial of a case, and acts done or writings published which are calculated to bring a judge into contempt or to lower his authority. But the root principle on which this inherent power to punish for contempt is founded, and the purpose for which it must be exercised, is not to vindicate the dignity of the individual judge or other judicial officer of a Court or even of the Court itself, but to prevent an undue interference with the administration of justice in the public interest. In the case of the newspaper article which tends to prejudice the fair trial of a case, the public character of this purpose may be more immediately apparent than in the case of conduct which is contemptuous of an individual judge. But reflection must show that in the latter case there is an interference with the administration of justice, which may be less immediate but more insidious, because its effect is not restricted to a single case but is a general effect affecting generally the business of the court in which the judge concerned presides. And there can be no more eloquent explanation than that contained in a written opinion of Wilmot C.J., which is quoted at p. 40 of the Judgment in *Rex v. Davies*[4], in which he puts it higher than I have thought it right to put it in this case. Attacks upon the judges, he says, "excite in the minds of the people a general dissatisfaction with all judicial determination . . . and whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and dangerous obstruction of justice, and in my opinion calls for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of the judges as private individuals, but because they are the channels by which the King's justice is conveyed to the people". And, in a striking phrase, he goes on to show that to give justice that "free, open and unimpaired current" which the public have a right to expect it is necessary that those who administer justice should not only be impartial but should be universally thought so. Those words were written in reference to His Majesty's Judges in England. In extracting the principle and applying it to the judicial body with which we are concerned in this case, it may be that the words are too wide. It may be taking too broad and theoretical a view to say that attacks upon the Rent Board or its President "excite a general dissatisfaction with *all* judicial determinations" in this country. But it must be true that they excite a general dissatisfaction with

the judicial determinations of that Board. For if the authority of the Board or its President is undermined, public confidence in the Board will be shaken; and if public confidence in the Board is shaken it must be a serious obstruction to justice because it tends to deter members of the public from claiming at the hands of the Board those rights, or that redress, to which the law entitles them.

But this does not mean that Judges or Courts, or any judicial person or body of persons, are immune from reasoned and reasonable criticism. No person holding a public position is immune from that. As was said by Lord Russell in *Reg v. Gray*[7] :—

> Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court.

I suppose there could hardly be a case where those words would be more applicable than the case of a senior member of the Bar writing a letter to his Bar Committee and criticising, "by reasonable argument or expostulation," the judicial conduct of the President of a Rent Board. But there is all the difference between reasoned criticism, based on reasonable argument and measured remonstrance, and an intemperate and abusive attack.

I do not propose to repeat the offensive language contained in some of the passages of this letter. It is sufficient to state that it is not disputed by Mr. Laycock, on behalf of the respondent, that if the Board is a Court, this letter, if published in a newspaper, would be a contempt of Court. Does it make it any less a contempt that, instead of being published to the general public, it was published to the Secretary and members of the Bar Committee and to Mr. Green? (I say nothing about the publication to the Colonial Secretary because I am prepared to accept Mr. Laycock's contention that it was never in the contemplation of Mr. Goho that the letter would have been sent to the Colonial Secretary.) Bearing in mind the purpose of this inherent power to punish for contempt, is the publication of this abuse to some seven or eight practising members of the legal profession calculated to deter members of the public from coming before the Board for the fair and proper adjudication of their matters, or not? If out of the whole general public a selection had to be made of seven or eight persons who could be most instrumental in deterring the public from having recourse to the Board, could there be a better choice than seven or eight legal practitioners of standing who in the course of their professional duties have to advise their clients whether to take proceedings before the Board or not? Whether the seven or eight persons to whom this letter was published believed the offensive matter which it contains, or how much of it, or to what extent, is irrelevant. Extrinsic evidence that the scurrilous abuse was in fact believed, or that public confidence as a fact was undermined, has never been required in contempt proceedings. Indeed such a requirement would lead to the curious result that the more fantastically extreme the abuse, and therefore the more unbelievable, the more immune from punishment the offender would be. The question is whether this letter is *calculated,* by its publication to these seven or eight persons, to deter the public from coming before the Board to have their matters adjudicated upon, and thereby to cause the obstruction of, and interference with, what Wilmot C.J. called "the free, open and unimpaired current" of justice. I have not the slightest doubt that it is so calculated. And as it is beyond dispute that this letter is of such a character that it would be a contempt if published in a newspaper, the fact that its publication was restricted to the Secretary and members of the Bar Committee and Mr. Green makes it no less a contempt, although that fact is one of the many factors which this Court will have to consider when the respondent comes before it in compliance with the writ.

I now come to the incident which occurred before the Rent Board on the 17th of June. It is clearly no part of the duty of this Court, either on the hearing of this Motion or when the respondent appears in pursuance of the writ, to determine the several issues of fact which were raised by the conflicting evidence regarding that incident. But as that was the incident which caused the respondent to write the letter in which the contempts are contained there might be matters connected with the incident which would mitigate the consequences to the respondent which must follow from his contempt. To that extent only was the evidence relevant to the matter which is before me. I shall therefore confine my conclusions upon the evidence to the following :—

(1) I have no doubt that Mr. Goho left the Rent Board with the feeling that he had been badly treated;

(2) I am not prepared to say that that feeling was unreasonable or unfounded.

But those are only two further factors, out of the many others, which this Court will have to take into account when the respondent comes up before it to answer for his contempt.

Among the other factors is his affidavit in these proceedings dated the 24th of July in which he repeats some of his contempts (including one particularly offensive passage) and underlines them in red as being true. Another is his oral evidence when some of the more objectionable passages in the letter, which are not underlined in red in his affidavit, were put to him, and his answers that the allegations made therein are true. A third factor is the far from unequivocal character of his apologies and withdrawals — particularly in that part of his evidence which starts at the beginning and ends with the luncheon adjournment — which seemed to me to reveal a failure to appreciate his position. It is only because I was so strongly impressed by his failure in that regard that I have thought it right, in his interest, to refer to these matters now. They are not strictly relevant to my determination of this application. But they will be most relevant when the respondent comes before this Court to answer for his contempt. And before that happens I wish to leave no doubt in the minds of the respondent or his advisers that both by his affidavit and by his oral evidence he has, in my judgment, aggravated his contempt.

There must be an Order in terms of the Motion. Writ to lie in the Registry for 7 days. Liberty to apply. Question of costs reserved to Tuesday the 9th September at 10 a.m.

Order Accordingly.

LEE PIAH CHEE AND ANOTHER v. SIM CHAI SOON.

[App. Civil Juris. (Brown, J.) September 3, 1947]

Increase of Rent (Restriction) Ordinance 1939 Sections 8 and 15 — Premises sublet without previous consent of landlord — Meaning of "possession".

The first appellant in this case was the tenant of certain premises let to him by the respondent. He subsequently sublet it to the second appellant but without the written consent of the respondent. In an action for possession instituted by the respondent, in the District Court, judgment was given against the two appellants, who thereupon appealed.

Held, (1) that Sections 8 and 15 of the Increase of Rent (Restriction) Ordinance only apply to protect a tenant in possession and as the first appellant was not in actual possession he was not protected by the Ordinance; (2) that the second appellant was not protected as there was no priority of contract between him and the respondent — landlord nor was there any permission in writing for the premises to be sublet as was required by Section 4 of the Ordinance.

APPEAL from District Judge (Civil).

G. C. Toh for the Appellants.

D. S. Marshall for the Respondents.

Brown, J. in an oral judgment said:— The only ground of appeal left to be determined is the question whether the learned D. J. correctly interpreted sections 8 and 15 of the Ordinance in their application to this case. But it is well-established by the authorities that sections 8 and 15 only apply to protect a tenant who is in possession. The first appellant was not in possession. He was living in another part of the premises having let the material part to the 2nd appellant.

The 2nd appellant is not protected because there is no privity of contract between him and the plaintiff, nor was there any permission in writing for the premises to be sublet as is required by section 4 of the Ordinance.

The appeal must be dismissed with costs.

Appeal Dismissed.

ESTATE & TRUST AGENCIES (1927) LTD. v. SIM TENG CHEW.

[App. Civil Juris. (Murray-Aynsley, C.J.) August 26, 1947]

Increase of Rent (Restriction) Ordinance, Section 3 — Whether the Crown is bound by this Ordinance — Crown Lands Encroachments Ordinance.

The appellants, who were the executors and trustees of the Estate of Tan Cheng Kee (deceased) held a lease of the land in question in this case which expired in September, 1943. On this land had been erected theatres for the exhibition of cinematograph films. By the terms of the lease the appellants were entitled to remove the buildings before the expiration of the lease but the Japanese authorities did not permit it. After the expiration of the lease, the Japanese authorities issued a temporary occupation licence, and this practice continued after the re-occupation until it was determined on 30th January, 1947, subject to 7 days notice. Later a warrant for dispossession was issued by a Police Court against the appellant and against this order they appealed. It was argued for the appellants that the Crown was bound by the Increase of Rent (Restriction) Ordinances, and that therefore the appellants did not lose the protection given by these Ordinances to them as tenants in possession, even though an agreement is entered into which purports to convert the tenancy into a licence.

Held, that the Crown is not bound by the Increase of Rent (Restriction) Ordinance and that therefore the warrant for dispossession was rightly issued.

Cases referred to: —

(1) *Warren v. Smith (The Magdalen College Case)* 1 Rol. Rep. 151.
(2) *Smithett v. Blythe* 109 E.R. 876.
(3) *Hornsey v. Hennell* (1902) 2 K.B. 73.
(4) *Cooper v. Hawkins* (1904) 2 K.B. 164.
(5) *Gorton Local Board of Health v. Prison Commissioners (reported in* [1902] 2 K.B. 165 (n)).
(6) *Moore v. Smith* 120 E.R. 1034.
(7) *Attorney General for the Duchy of Lancaster v. Moresby* (1919) W.N. 69.